

**APPENDIX 0 -- OVERVIEW OF PUBLIC PARTICIPATION IN THE
ENTIRE RCRA PROGRAM (EXCERPT FROM 1990
RCRA ORIENTATION MANUAL)**

SECTION VII

PUBLIC PARTICIPATION

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SUMMARY

SECTION VII

PUBLIC PARTICIPATION



OVERVIEW

The right of the public to participate in government decisions is basic to our democratic system. In few places is this right exercised more than in the area of hazardous waste management. The public is deeply concerned about, and often fretful of, the potential impacts of hazardous waste on their health and safety. In recognition of their rights and interest in hazardous waste management, and in a conscious attempt to include them in the decision-making process, the government gives the public numerous opportunities to get involved in all phases of the RCRA program.

The overall goal of public participation is to build trust and credibility, and to keep emotions, human energy, and conflicts focused on substantive issues and solutions. Public participation provides an opportunity for all interested parties to become informed and involved, and to influence program development and implementation. Further, EPA managers have found that active public participation provides a forum to identify and address concerns thus reducing conflict.

This chapter details the public participation framework established for EPA and, where applicable, specifically for RCRA. It includes descriptions of the statutory and regulatory requirements and a summary of guidance materials that address public participation.

GENERAL EPA PUBLIC PARTICIPATION REQUIREMENTS

In consideration of the importance of citizen involvement, Congress established public participation requirements that apply to all environmental programs administered by EPA. They are outlined in the Administrative Procedures Act ((aAPA) 5 U.S.C. Sections 551-559) and include:

Providing information and soliciting comments on all proposed and final Agency actions, e.g., the development of regulations

Incorporating public comments into the decision-making process, and

Establishing an appeals process for certain Agency decisions.

State employees should consult State administrative regulations for further guidance on public participation requirements. The participation requirements in the Federal APA assure the public a voice in EPA decision making.

Freedom of Information Act

The Freedom of Information Act (FOIA) -- which serves as the government's primary mechanism for handling information requests -- guarantees that the public will have access to government records, including those of the EPA. Specifically, it requires each Federal agency to establish procedures for handling FOIA requests regarding government statutes, regulations, standards, permit conditions, requirements, orders, or policies.

EPA, therefore, has pursued a policy of fully disclosing its records to the public, consistent with the rights of persons entitled to confidential business information (CBI), and the need for EPA to promote frank internal policy deliberations. EPA will disclose information to any requester to the fullest extent possible without unjustifiable expense or unnecessary delay.

FOIA requests are written for records held by or believed to be held by EPA. FOIA requests must reasonably describe the records in a manner that will permit proper identification of government documents or records. Although requestors do not need to name the specific documents in question, they must provide a clear description of the information they seek. The FOIA refers to all written requests, regardless of whether the requester refers to the FOIA or not. Any existing form of information may be covered, but the FOIA does not require the creation of new records. A FOIA request can be made by any person, corporation, or organization.



RCRA PUBLIC PARTICIPATION REQUIREMENTS

However, because the issues surrounding hazardous waste management often arouse intense public sentiments, the public participation framework developed under RCRA further expands citizen opportunity for involvement well beyond Agency-wide requirements. This framework has three parts:

Statutory requirements
Regulatory requirements, and
Guidance.

Statutory Requirements

When it implements the RCRA program within a State, EPA gives the public access to facility and site information relating to permitting, compliance, enforcement, and inspections. RCRA Section 3006 requires authorized States to make this information available to the public in a manner substantially similar in method and degree to EPA-implemented RCRA programs. In certain cases, however, the information may be confidential and unavailable to the public, e.g., when company trade secrets are involved. The following section discusses the specific requirements for dealing with confidential business information which are principally regulatory requirements.

Program Implementation

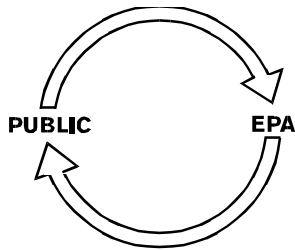
Section 3006 of RCRA requires that public comments be solicited before:

- A State submits an application for Subtitle C final authorization

- EPA decides to grant or deny a State authorization

- EPA withdraws a State's authorization, and

- EPA suspends or revokes a hazardous waste facility permit.



Enforcement

Section 7002 of RCRA gives fairly broad legal authority to ensure that the entire RCRA program is properly implemented. It allows a citizen to bring a civil suit against any person or government agency alleged to be in violation of any permit, standard, regulation, condition, requirement, or order that has become effective under the Act.

HSWA expanded citizen rights to bring suit against RCRA violators by allowing private individuals to initiate suits against any past or present generator, transporter, owner, or operator of a facility who has contributed to or is contributing to a condition that may present an imminent and substantial endangerment to human health and the environment.

However, the right of citizens to bring suits under Section 7002 is limited in certain situations. No suit may be brought if EPA or a State is already taking enforcement action against the alleged violator. HSWA further limits the reach of such suits by prohibiting them from impeding permit issuance or facility siting. Finally, citizens are prohibited from suing transporters for problems that arise following the delivery of hazardous waste.

Regulations

The RCRA regulations under 40 CFR Part 25 focus on:

Ensuring that the public understands the RCRA program and any proposed changes to it

Responding to public concerns and including the public in the decision-making process

Developing a close link among EPA, States, and the public, and

Providing opportunities for public participation beyond what is required, whenever feasible.

To achieve these regulatory goals, agencies implementing RCRA are required to:

Provide free copies of reports upon request

Alert interested and affected parties of upcoming public hearings, and

Establish EPA-funded advisory groups when an issue warrants sustained input from a core group of citizens.

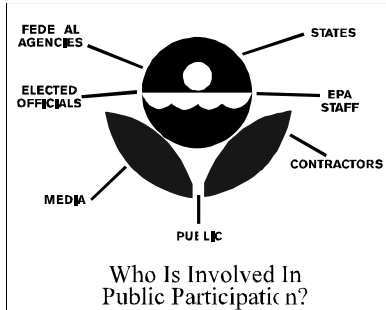
In addition to the 40 CFR Part 25 regulations, EPA's permitting regulations (40 CFR Part 124) also address public participation. They require the permitting agency to:

Notify the public of the intent to issue or deny a permit

Provide the public 45 days to comment on the permit application

Consider public comments regarding permit violations, and

Notify the public of proposed major modifications to an



operating permit.

In addition, 40 CFR Parts 264 and 265 require public notice and comments on RCRA closure plans.

Confidential Business Information

In the course of administering EPA programs, agency officials have access to material containing CBI, e.g. trade secrets and proprietary information. Because EPA must protect the rights of those who submit privileged information, employees are required to take all reasonable measures to prevent unauthorized disclosure of CBI. Regulations regarding confidentiality are contained in 40 CFR Part 2, Subpart B. These apply to RCRA as well as other EPA programs.

These regulations identify the proper procedures businesses must employ to claim confidentiality. In addition, these regulations establish the guidelines EPA must use to determine the validity of the claim, and impose rules for handling CBI.

When EPA notifies a business that it must submit confidential information for review, EPA also must notify the business of its right to assert a claim of confidentiality. Businesses responding to EPA's queries must clearly identify all confidential documents, materials, and information. EPA then determines the validity of the CBI claim. Businesses can claim information as confidential if it meets certain criteria, e.g., it has been previously protected as confidential, or it is not reasonably obtainable by others.

Employees authorized to use CBI are responsible for the control of such information and they may discuss CBI only with other authorized persons. Any violations should be reported immediately. In addition, employees must not discuss CBI over the telephone and when holding confidential information, they must store the confidential materials in an approved container when not in use. Finally, when working with representatives of businesses that have submitted CBI, employees must verify the representatives' identities before discussing any of the confidential information.

Guidance

To supplement its statutory and regulatory requirements, EPA developed guidance documents regarding public participation in RCRA permitting. The guidance stresses the importance of:

Identifying public concerns early in the permitting process

Encouraging the exchange of information among EPA, the State, the permittee, and the community

Creating open and equal access to the permitting process, and

Anticipating conflicts and providing an efficient method of resolution.

In some cases, EPA or the State may develop a Public Involvement Plan. This plan outlines the steps and actions EPA will take to communicate with the public during the facility permitting process.

OUTREACH AND PUBLIC ASSISTANCE



A number of opportunities exist for the public to obtain RCRA program information and assistance, including fact sheets and pamphlets. Two particularly noteworthy programs include:

The RCRA/Superfund Hotline
The Office of Ombudsman.

RCRA/Superfund Hotline

Hazardous waste regulations often seem complex even to those familiar with EPA's programs. To assist the public in understanding the RCRA and Superfund programs, EPA created the RCRA/Superfund Hotline. Anyone may call the Hotline staff and ask them questions related to the RCRA and Superfund programs. The Hotline is staffed by professionals who are completely familiar with the latest issues and regulations affecting EPA's hazardous waste programs. The Hotline is open Monday through Friday from 8:30 AM to 7:30 PM, and may be contacted at either (202) 382-3000, or toll free (800) 424-9346.

Office of Ombudsman

In order to create a central clearinghouse for public concerns on matters relating to the implementation and enforcement of RCRA, EPA established the Office of Ombudsman and appointed a Hazardous Waste Ombudsman in Headquarters and each Region. The Ombudsman's primary responsibility is to respond to questions and complaints regarding EPA's hazardous waste program. In addition, the Ombudsman makes recommendations to the Administrator based on inquiries received. The Headquarters Ombudsman may be reached at:

Office of Ombudsman
U.S. Environmental Protection
Agency
Office of Solid Waste and
Emergency Response
Mail Code OS-130
401 M Street, SE
Washington, DC 20460
(202) 475-9361

To assist citizens with the RCRA program, EPA created a number of public outreach programs, the most noteworthy of these are the RCRA/Superfund Hotline and the Office of the Ombudsman.

SUMMARY

The public participation framework developed under RCRA expands citizen opportunity for involvement well beyond Agency-wide requirements (outlined in the Administrative Procedures Act and Freedom of Information Act). This framework consists of:

- Statutory requirements
- Regulations
- Guidance.

RCRA-mandated programs integrate public comment into many decisions, including State authorization and facility permitting.

EPA adheres to legal requirements for the access to and release of information. In order to protect rights of private industry, EPA also has set standards for the use of privileged company data. EPA strictly regulates CBI by carefully limiting employee access to such information, by strictly controlling the use and storage of such information, and by verifying corporate identity before discussing such information.

